IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.9251 OF 2004

Shripat Gopal Shinde : Petitioner

V/s.

The State of Maharashtra, Housing and Special Assistance Department, Mantrayala, Mumbai--400 032 & Ors. : Respondents

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Mr.U.S.R. Singh for the petitioner.

Mr.S.K.Chinchalikar, Asstt. Govt. Pleader for the respondent no.1.

Mr.G.D.Utangale i/b. M/s.Utangale Co., for the respondent no.2.

Mr.Birendra Saraf with Mr.Ranjit Dharmadhikari for the respondent no.3.

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CORAM : S.A. BOBDE, J.

October 5, 2005.

P.C.:

1. Rule, returnable forthwith.

The learned counsel for the respective respondents waive service of rule.

Heard by consent.

2. The petitioner has challenged the impugned order dated 12.5.2003 by this petition filed in October 2004. I am not inclined to look into the question of delay in view of the fact that the petitioner states that he has preferred a review application which has not yet been decided.

3. By this petition, the petitioner questions the impugned order dated 12.5.2003 in which he has been held not to be eligible for allotment of a tenement under the rehabilitation scheme of the Slum Rehabilitation Authority on the ground that as per the voters' list, one person from the hut in which the petitioner is claimed to be living has already been given a tenement under sr. no.13. The petitioner has been found to have resided in hut no.37 on the basis of the following:-

"1. New Ration Card No.0140141 dt. 14.7.1999.

2. Old Ration Card No.897178 dt. 22.12.94.

3. Photopass Survey of dweller-holder in the year 2000, vide Receipt

No.0468021 dt. 17.7.2000.

4. Record of Enumeration No.742008/dtd. 5.11.2001.

5. Election Commission of India I. Card No.MT/09/043/0273110 dt. 21.11.94.

6. Elec. Bill for Nov. 2001 Con. No.K00088428, Meter No.4176976."

4. It has been found by the authorities that the petitioner i.e. Shripat Gopal Shinde resided along with his brother Ganpat in hut no.37 as is apparent from the voters' list of 1995 at exh.'D' to the petition.

5. Mr.Singh, the learned counsel for the petitioner, strongly urged that the petitioner should be held entitled on the basis of the fact that his name was shown in the ration card which is annexed at exh.'L' to his rejoinder at page 107 of the paper-book. This document shows that the petitioner's name was deleted in 1993 from the ration card. It is not possible to infer from this document that the petitioner was living separately in hutment no.T-7.

6. The next contention of Mr.Singh, the learned counsel for the petitioner, is that all those who are living in the hutment are entitled to be rehabilitated. The learned counsel for the respondent no.2 has relied on the annexure to the Development Control Regulation no.33(10). Clause 1.7 of appendix IV reads as follows:-

> "1.7 The individual agreement entered into between hutment-dweller and the owner/ developer/co-operative housing society/ NGO shall be in the joint names of pramukh hutment-dweller and spouse for every structure."

This clearly contemplates that every person found to have been living in hutment prior to 1.1.1995 is not entitled to be rehabilitated under the scheme. Having regard to the circumstances of this case, it is not possible to agree with the petitioner that he has a right to be rehabilitated.

7. The petition is, therefore, dismissed. The petitioner shall be at liberty to make such representation, as may be advised, to the respondent no.2 which may be considered. The rule stands discharged.

S.A. BOBDE, J.